

**Sisam & Watje, P.A.**

a professional association of lawyers  
7230 METRO BOULEVARD  
MINNEAPOLIS, MINNESOTA 55439-2128  
(952) 920-8877 Phone  
(952) 646-9977 Fax  
(888) 906-4636 Toll Free  
email Sisam@Sisam.com

Gregg E. Isaacson,  
of counsel

**Tammy P. Friederichs**

**OFFICE OF  
APPELLATE COURTS**

January 17, 2001

JAN 18 2001

The Honorable Kathleen Anne Blatz  
Chief Justice of the Minnesota Supreme Court  
Minnesota Supreme Court  
305 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

**FILED**

C 1-01-118

Dear Chief Justice Blatz:

Please find enclosed a courtesy copy of the following:

1. Amended Notice of Motion and Motion for Assignment of Cases to a Single Judge Pursuant to Minn. R. Gen. Prac. 113;
2. Memorandum of Law in Support of Motion for Assignment of Cases to a Single Judge Pursuant to Minn. R. Gen. Prac. 113;
3. Affidavit of Tammy P. Friederichs with attached exhibits; and
4. Proposed Order.

Yours truly,



TAMMY P. FRIEDERICHS

TPF:amf  
Enclosures

cc: Michael M. Lafeber, Esq. 242871

JAN 18 2001

STATE OF MINNESOTA  
IN MINNESOTA SUPREME COURT

**FILED**

AMENDED NOTICE OF MOTION AND MOTION FOR ASSIGNMENT OF CASES  
TO A SINGLE JUDGE PURSUANT TO MINN. R. GEN. PRAC. 113

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Twin Cities Harley-Davidson, Inc.,  
Plaintiff

TRIAL COURT CASE NO.:  
19-C6-00-9217 (Dakota County)

v.  
Jeffrey S. Berg,  
Defendant.

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Twin Cities Harley-Davidson, Inc.,  
Plaintiff

TRIAL COURT CASE NO.:  
C6-00-7728 (Anoka County)

v.  
Bradley P. Bruggentheis,  
Defendant.

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Twin Cities Harley-Davidson, Inc.,  
Plaintiff

TRIAL COURT CASE NO.:  
19-C4-00-9216 (Dakota County)

v.  
Rocklyn Bullis,  
Defendant.

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Twin Cities Harley-Davidson, Inc.,  
Plaintiff

TRIAL COURT CASE NO.:  
CT-00-014268 (Hennepin County)

v.  
Robert J. Byrnes,  
Defendant.

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Twin Cities Harley-Davidson, Inc.,  
Plaintiff

TRIAL COURT CASE NO.:  
C2-00-1539 (Rice County)

v.  
Robert A. Cady,  
Defendant.

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrance J. Carter,  
Defendant.**

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**TRIAL COURT CASE NO.:  
19-CX-00-9611 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
David Denzer,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C4-00-7727 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave and Tracy Gough,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012647 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jeff Jungwirth,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012648 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Tim Junkert,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C9-00-8288 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jim Kinney,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012649 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Connie L. Kohrt,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013032 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark Lindstrom,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012650 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Cris C. Lindwall,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012651 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Alan L. Lucken,  
Defendant.**

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**TRIAL COURT CASE NO.:  
2000-18572 (Scott County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Daniel Lund,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C1-00-8396 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Anne Marie Mascia,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C3-00-8240 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Steven A. Rose,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C6-00-7731 (Anoka County)**

---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave Schodde,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012652 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark E. Sutherland,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013090 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
John Thorman,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012653 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Lawrence White,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C0-00-668 (Nobles County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrell M. Williams,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012654 (Hennepin County)**

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**Jeffrey S. Berg, Bradley P. Bruggenthies,  
Rocklyn Bullis, Robert J. Byrnes, Robert A.  
Cady, Terrance J. Carter, David Denzer,  
Tracy Gough, Dave Gough, Jeff Jungwirth,  
Tim Junkert, Jim Kinney, Connie L. Kohrt,  
Mark Lindstrom, Cris C. Lindwall, Alan L.  
Lucken, Daniel Lund, Anne Marie Mascia,  
Steven A. Rose, Dave Schodde, Craig Smith,  
Mark E. Sutherland, John Thorman,  
Lawrence White, and Terrell M. Williams,**

**TRIAL COURT CASE NO.:  
19-C8-00-9221 (Dakota County)**

**Plaintiffs,**

**v.**

**Twin Cities Harley-Davidson, Inc.,  
Defendant.**

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To: Twin Cities Harley-Davidson, Inc., above-named and its attorney Michael W. Unger, Rider Bennett Egan & Arundel, 333 South Seventh Street, Suite 2000, Minneapolis, Minnesota 55402.

**PLEASE TAKE NOTICE**, that the undersigned will bring the attached Motion on for hearing before the Honorable Kathleen Anne Blatz, Chief Judge of the Minnesota Supreme Court, with or without hearing, at a date and time to be determined or as soon thereafter as counsel may be heard.

### **MOTION**

Pursuant to Minn. R. Gen. Prac. 113.01 and Minn. R. Gen. Prac. 113.03 (2001), Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams (hereinafter "multi-plaintiffs") bring this motion to request that the Minnesota Supreme Court order that all

pretrial and trial proceedings in all cases above-referenced be heard before a single judge for reasons of efficiency and in the interests of justice.

Multi-plaintiffs base their request upon the facts of this case, the attached Memorandum of Law, and affidavit of Tammy P. Friederichs, and the arguments of counsel to be presented at the hearing, if any.

**SISAM & WATJE, P.A.**

Dated: 1/17/01



EDWIN L. SISAM #183313  
DOROTHY J. BUHR #21842X  
TAMMY P. FRIEDERICHS #219423  
7230 Metro Boulevard  
Minneapolis, Minnesota 55439-2128  
(952) 920-8877

*Attorneys for Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams*

JAN 18 2001

STATE OF MINNESOTA  
IN MINNESOTA SUPREME COURT

**FILED**

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ASSIGNMENT OF  
CASES TO A SINGLE JUDGE PURSUANT TO MINN. R. GEN. PRAC. 113

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

v.

**Jeffrey S. Berg,**

**Defendant.**

**TRIAL COURT CASE NO.:**  
**19-C6-00-9217 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

v.

**Bradley P. Bruggentheis,**

**Defendant.**

**TRIAL COURT CASE NO.:**  
**C6-00-7728 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

v.

**Rocklyn Bullis,**

**Defendant.**

**TRIAL COURT CASE NO.:**  
**19-C4-00-9216 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

v.

**Robert J. Byrnes,**

**Defendant.**

**TRIAL COURT CASE NO.:**  
**CT-00-014268 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

v.

**Robert A. Cady,**

**Defendant.**

**TRIAL COURT CASE NO.:**  
**C2-00-1539 (Rice County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrance J. Carter,  
Defendant.**

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**TRIAL COURT CASE NO.:  
19-CX-00-9611 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
David Denzer,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C4-00-7727 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave and Tracy Gough,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012647 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jeff Jungwirth,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012648 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Tim Junkert,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C9-00-8288 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jim Kinney,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012649 (Hennepin County)**

---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Connie L. Kohrt,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013032 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark Lindstrom,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012650 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Cris C. Lindwall,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012651 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Alan L. Lucken,  
Defendant.**

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**TRIAL COURT CASE NO.:  
2000-18572 (Scott County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Daniel Lund,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C1-00-8396 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Anne Marie Mascia,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C3-00-8240 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Steven A. Rose,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
C6-00-7731 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Dave Schodde,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012652 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Mark E. Sutherland,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013090 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**John Thorman,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012653 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Lawrence White,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
C0-00-668 (Nobles County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Terrell M. Williams,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012654 (Hennepin County)**

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**Jeffrey S. Berg, Bradley P. Bruggenthies,  
Rocklyn Bullis, Robert J. Byrnes, Robert A.  
Cady, Terrance J. Carter, David Denzer,  
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Steven A. Rose, Dave Schodde, Craig Smith,  
Mark E. Sutherland, John Thorman,  
Lawrence White, and Terrell M. Williams,**

**TRIAL COURT CASE NO.:  
19-C8-00-9221 (Dakota County)**

**Plaintiffs,**

**v.**

**Twin Cities Harley-Davidson, Inc.,  
Defendant.**

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#### **NATURE OF THE MOTION**

Pursuant to Minn. R. Gen. Prac. 113.01 and Minn. R. Gen. Prac. 113.03 (2001), Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams (hereinafter "multi-plaintiffs") bring this motion to request that the Minnesota Supreme Court order that all pretrial and trial proceedings in all cases above-referenced be heard before a single judge for reasons of efficiency and in the interests of justice.

#### **STATEMENT OF FACTS**

In September of 1998, approximately 7,500 people initiated a class action against Twin Cities Harley-Davidson, Inc. (hereinafter "TCHD") for damages. That case has been settled. Approximately 25 people, who either opted out of the class or suffered damages

after the class period, informed TCHD of their intent to bring their own multi-plaintiff suit for damages. (Hereinafter, these people are referred to as "multi-plaintiffs.") Both the class action case and the 25 multi-plaintiffs alleged violations of the Consumer Protection Acts (including consumer fraud and false and deceptive advertising) based on TCHD's pattern and practice of deceptive trade practices in both written and oral representations.

On June 23, 2000, the multi-plaintiffs' counsel provided TCHD's counsel with a letter specifically identifying the multi-plaintiffs, outlining their claims, providing TCHD with UCC notice, and notifying TCHD of their intent to commence litigation. Subsequently, the parties' attorneys engaged in a series of written and verbal communications to exchange information and discuss an early settlement of the claims. As the negotiations proceeded, the multi-plaintiffs established a date by which TCHD was to respond to their settlement demand. However, since TCHD's counsel said he was scheduled to be out of the office during that time frame, the multi-plaintiffs' counsel, out of courtesy, extended the deadline for settlement negotiations. Affidavit of Tammy P. Friederichs.

TCHD however took advantage of the extension to try to beat the multi-plaintiffs to the courthouse steps. Before the settlement negotiation deadline even expired, TCHD delivered 23 separate declaratory judgment actions in seven different counties, naming almost all of the multi-plaintiffs as defendants, to the sheriffs of the respective counties. Upon the expiration of the settlement negotiation deadline, but before the counsel was aware that any of the multi-plaintiffs had been served with the declaratory judgment actions, Metro Legal attempted to serve TCHD with the multi-plaintiff case.

TCHD's officers took deliberate steps to avoid service of process. Metro Legal, who attempted service on TCHD, concluded based on its observations, that TCHD's officers were

deliberately avoiding service.<sup>1</sup> Ex. B. The multi-plaintiffs also served their case on TCHD's officers and counsel via certified mail. TCHD's officers "REFUSED" to accept the certified mail. After these repeated attempts to serve TCHD, the multi-plaintiffs served their action by service on the Secretary of State. Affidavit of Tammy P. Friederichs.

### PROCEDURAL HISTORY

Because of TCHD's action above described, there are currently 23 declaratory judgments pending in seven counties. *Id.* In an attempt to have all cases heard in one forum, the multi-plaintiffs sought dismissal of the 23 declaratory judgment actions in favor of allowing the multi-plaintiff case to proceed with all 25 plaintiffs<sup>2</sup> in one action. TCHD sought dismissal of the multi-plaintiff case. *Id.* In the declaratory judgment actions against Berg and Bullis, a Dakota County judge denied the motions for dismissal. Ex. C and D. In the other 21 declaratory judgment actions, the Rule 12 motions have not yet been heard or decided. Affidavit of Tammy P. Friederichs. In the multi-plaintiff action, the Dakota County judge granted TCHD's motion and dismissed the multi-plaintiff case. Ex. E. As soon as that Order is amended to include the standard language, "let judgment be entered accordingly," and judgment is entered, the multi-plaintiffs will be appealing that dismissal. Affidavit of Tammy P. Friederichs

In order to streamline these proceedings, save judicial resources, prevent inconsistent adjudications, and afford all parties the opportunity to bring their claims, the multi-plaintiffs

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<sup>1</sup> Dawn Ausen, who also attempted service of process on TCHD, had similar experiences. Ex. A.

<sup>2</sup> The difference in the numbers arises from two facts: (1) TCHD did not bring a declaratory judgment action against Craig Smith; and (2) TCHD named Dave Gough and Tracy Gough in the same declaratory judgment action.

ask this Court to exercise its authority pursuant to Minn. R. Gen. Prac. 113 to combine all the above referenced cases<sup>3</sup> to be heard before a single judge.

## LEGAL ANALYSIS

### **I. Pursuant to Minn. R. Gen. Prac. 113.01 and 113.02, the above-referenced cases should be assigned to a single judge for all pretrial and trial proceedings.**

Minn. R. Gen. Prac. 113.01 provides a procedural mechanism to allow the Chief Judge<sup>4</sup> to combine cases before a single judge when the court deems the combination efficient or in furtherance of the interests of justice: “In any case that the court or parties believe is likely to be complex, or where other reasons of efficiency or the interest of justice dictate, the court may order that all pretrial and trial proceedings shall be heard before a single judge.” Minn. R. Gen. Prac. 113.02 provides the factors for a court to consider in determining whether to assign multiple cases to a single judge:

- (1) the number of parties;
- (2) the nature of the claims;
- (3) the anticipated length of trial;
- (4) the likelihood of an unusually high number of pretrial court appearances;
- (5) the presence of novel discovery issues; and
- (6) the absence of effective communication between counsel.

Analysis of several of these factors demonstrates the need for assigning the case to a single judge. (At this time, factors 4-6 do not seem to be applicable.)

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<sup>3</sup> Even though the multi-plaintiff action has been dismissed, the multi-plaintiffs request that it be administratively assigned to the same judge. Then, in the event the dismissal is reversed by the Court of Appeals, it will not be necessary to bring this motion again to combine that case.

<sup>4</sup> Although Minn. R. Gen. Prac. 113.01 does not expressly identify the Chief Justice of the Minnesota Supreme Court, the Minnesota Supreme Court has exercised authority under Rule 113. See e.g. *In re Minnesota Vitamin Antitrust Litigation*, 606 N.W.2d 446 (Minn. 2000); *In re Minnesota Silicone Implant Litigation*, 503 N.W.2d 472 (Minn. 1993); *In re Minnesota L-tryptophan Litigation*, No. C0-91-706 (Minn. 1991); *In re Minnesota Asbestos Litigation*, C4-87-2406 (Minn. 1987); see generally Advisory Committee Comment—2000 amendments (attached hereto as Ex. F). The amendments effective March 1, 2001, reflect that practice and expressly identify the Chief Judge of the Minnesota Supreme Court. Minn. R. Gen. Prac. 113.03 (2001). (Ex. F). Legal analysis under the new Rule 113.03 is presented *infra*.

The number of parties. Currently, there are 23 declaratory judgment actions pending in seven counties. The cases are assigned to numerous, different judges, in these counties. (Some cases are not assigned to any specific judge.) Affidavit of Tammy P. Friederichs. TCHD is a plaintiff in each declaratory judgment, and there are 24 different defendants. *Id.* Craig Smith, who is a plaintiff in the multi-plaintiff but not sued in a declaratory judgment action, is a plaintiff in limbo. (Judge Carolan's order dismisses Mr. Smith's claims even though he was not sued in a declaratory judgment action—this issue will need to be addressed on appeal.) *Id.* Since there are 26 parties involved (*Id.*), the first factor weighs heavily in favor of assignment to a single judge.

The nature of the claims. The multi-plaintiffs (just as the putative class<sup>5</sup> of 7,500 people) allege that TCHD engaged in a pattern and practice of deceptive advertising, consumer and common law fraud, and breach of contract. All the multi-plaintiffs make the same allegations against TCHD. As stated in the multi-plaintiff complaint (Ex. G), multi-plaintiffs allege that TCHD employed the following sales practice for the sale of new Harley Davidson motorcycles: TCHD required customers to place orders for new Harley Davidson motorcycles, put their names on a waiting list, and make down payments (or deposits) of \$500.00. Pursuant to TCHD's sales practice, the down payment reserved the customer's order of priority for taking delivery of the new motorcycle when it came in, and the down payment could be applied to the purchase of the motorcycle. Pursuant to TCHD's policy, when the customer's name came to the top of the list to take delivery of the motorcycle, TCHD would sell the motorcycle for the Harley Davidson "Manufacturer's Suggested Retail Price" (hereinafter "MSRP"). Based upon TCHD's stated sales practice, multi-plaintiffs

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<sup>5</sup> In the class action, TCHD brought a motion to prevent class certification. That motion was denied. Before Plaintiffs' motion for class certification, the case settled via a script settlement. The Court provided Class members with a Notice of the settlement, held a fairness hearing, and ultimately approved the settlement.

placed orders to purchase new Harley Davidson motorcycles, paid \$500.00 deposits, and waited on the waiting list. However, when the time came to purchase the motorcycles, each multi-plaintiff was required to pay a price higher than MSRP in order to purchase the motorcycle. *Id.* Accordingly, all the multi-plaintiffs' claims arise out of TCHD's same sales practice.

The anticipated length of trial. If the 23 declaratory judgment actions are not combined and assigned to a single judge, the parties would be forced to proceed with 23 trials before 23 different juries. Affidavit of Tammy P. Friederichs. During each of these 23 trials, the other 24 multi-plaintiffs would testify in order to demonstrate that TCHD consistently followed this sales practice and that TCHD engaged in a pattern and practice of conduct that violates the Consumer Protection Act and common law. *Id.* Therefore, each of the multi-plaintiffs would have to testify as to their factual situation 23 times; each of TCHD's officers would have to testify 23 times; TCHD's salesmen would have to testify 23 times. *Id.* A trial that could be completed by one trial judge and one jury in approximately 10-12 trial days would be extended to the equivalent of 23 judges, taking approximately 10 trial days for each of 23 trials and 23 juries, for a total of 230 trial days. *Id.* The drain on judicial resources would be extensive—but more importantly—unnecessary. In addition, with 23 trials before different juries, there is a potential for inconsistent adjudications based on TCHD's same sales practice. *Id.* These factors weigh in favor of consolidation before one judge, one pretrial proceeding, and one trial.

**II. Pursuant to Minn. R. Gen. Prac. 113.03 (2001), the above-referenced cases should be assigned to a single judge for all pretrial and trial proceedings.**

Effective March 1, 2001, Minn. R. Gen. Prac. 113.03 was amended to expressly recognize the Minnesota Supreme Court's authority to assign cases to a single judge:

When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single judge may be made to the chief justice of the supreme court.

Minn. R. Gen. Prac. 113.03 (2001). Since the above-referenced cases meet the criteria of Rule 113.03, assignment to a single judge is appropriate.

Two or more cases pending in more than one judicial district. The multi-plaintiffs' motion is based on the fact that 23 cases are pending in seven judicial districts.

One or more common questions of fact. As described *supra*, almost all facts are common. TCHD employed and followed a uniform sales practice that required customers to make down payments and wait on a waiting list in order to have the opportunity to purchase Harley-Davidson motorcycles for the Harley Davidson MSRP. Multi-plaintiffs further allege that TCHD engaged in a pattern and practice of deceptive advertising, consumer and common law fraud, and breach of contract. Ex. G. Therefore, the majority of the evidence presented in the case will demonstrate these common issues of law and fact.

Related cases present a special need for central judicial management. This situation cries out for central judicial management. The 25 multi-plaintiffs informed TCHD of their intent to bring a multi-plaintiff case. TCHD responded by serving 23 declaratory judgment actions in seven different counties. These declaratory judgment actions are all related because they all arise out of TCHD's common sales practice and repeated conduct of engaging in a pattern and practice of deceptive advertising, consumer and common law fraud, and breach of contract. Affidavit of Tammy P. Friederichs. A special need for central judicial management is presented for two reasons: (1) to avoid the unnecessary waste of judicial resources to conduct 23 cases instead of just one; and (2) to prevent inconsistent

adjudications. If ever there was a situation demonstrating the need for application of the new Rule 113.03, this case is it.

**III. If this motion is granted, the Chief Justice follows the procedure set forth in Minn. R. Gen. Prac. 113.03 (2001).**

If this motion is granted, Rule 113.03 sets forth the procedural steps: "When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district." Thus, this Court in its discretion and upon consultation, has the authority to assign all cases to any district court judge.

Minn. R. Gen. Prac. 113.03 also explains the criteria the Chief Justice may consider in deciding which judge to assign the cases:

If the motion is to be granted, in selecting a judge, the chief justice may consider, among other things, [1] the scope of the cases and their impact on judicial resources; [2] the availability of adequate judicial resources in the affected districts; and [3] the ability, interest, training and experience of available judges.

### CONCLUSION

In the interests of justice and for reasons of efficiency, the multi-plaintiffs request that the Chief Justice of the Minnesota Supreme Court order that all pretrial and trial proceedings in all cases above-referenced be heard before a single judge.

SISAM & WATJE, P.A.

Dated: 1/17/01



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EDWIN L. SISAM #183313

DOROTHY J. BUHR #21842X

TAMMY P. FRIEDERICHS #219423

7230 Metro Boulevard

Minneapolis, Minnesota 55439-2128

(952) 920-8877

*Attorneys for Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams*

STATE OF MINNESOTA  
IN MINNESOTA SUPREME COURT

JAN 18 2021

AFFIDAVIT OF TAMMY P. FRIEDERICHS

**FILED**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

**TRIAL COURT CASE NO.:**  
**19-C6-00-9217 (Dakota County)**

**v.**  
**Jeffrey S. Berg,**  
**Defendant.**

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---

**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

**TRIAL COURT CASE NO.:**  
**C6-00-7728 (Anoka County)**

**v.**  
**Bradley P. Bruggentheis,**  
**Defendant.**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

**TRIAL COURT CASE NO.:**  
**19-C4-00-9216 (Dakota County)**

**v.**  
**Rocklyn Bullis,**  
**Defendant.**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

**TRIAL COURT CASE NO.:**  
**CT-00-014268 (Hennepin County)**

**v.**  
**Robert J. Byrnes,**  
**Defendant.**

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**Twin Cities Harley-Davidson, Inc.,**  
**Plaintiff**

**TRIAL COURT CASE NO.:**  
**C2-00-1539 (Rice County)**

**v.**  
**Robert A. Cady,**  
**Defendant.**

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---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrance J. Carter,  
Defendant.**

---

**TRIAL COURT CASE NO.:  
19-CX-00-9611 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
David Denzer,  
Defendant.**

---

**TRIAL COURT CASE NO.:  
C4-00-7727 (Anoka County)**

---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave and Tracy Gough,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012647 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jeff Jungwirth,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012648 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Tim Junkert,  
Defendant.**

---

**TRIAL COURT CASE NO.:  
C9-00-8288 (Anoka County)**

---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jim Kinney,  
Defendant.**

---

**TRIAL COURT CASE NO.:  
CT-00-012649 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Connie L. Kohrt,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013032 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark Lindstrom,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012650 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Cris C. Lindwall,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012651 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Alan L. Lucken,  
Defendant.**

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**TRIAL COURT CASE NO.:  
2000-18572 (Scott County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Daniel Lund,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C1-00-8396 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Anne Marie Mascia,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C3-00-8240 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Steven A. Rose,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
C6-00-7731 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Dave Schodde,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012652 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Mark E. Sutherland,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013090 (Hennepin County)**

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---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**John Thorman,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012653 (Hennepin County)**

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---

**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Lawrence White,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
C0-00-668 (Nobles County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.**

**Terrell M. Williams,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012654 (Hennepin County)**



proceeded, we established a date by which TCHD was to respond to our clients' settlement demand. However, since TCHD's counsel said he was scheduled to be out of the office during that time frame, we, out of courtesy, extended the deadline for settlement negotiations.

3. In addition to hiring process servers, we served our clients' case on TCHD's officers and counsel via certified mail. TCHD's officers "REFUSED" to accept the certified mail. After these repeated attempts to serve TCHD, we served the action by service on the Secretary of State.

4. There are currently 23 declaratory judgments pending in seven counties. These cases are identified in the caption. In an attempt to have all cases heard in one forum, we sought dismissal of the 23 declaratory judgment actions in favor of allowing the multi-plaintiff case (File No. 19-C8-00-9221) to proceed with all 25 plaintiffs in one action. In the declaratory judgment actions against Berg and Bullis, a Dakota County judge denied the motions for dismissal. *See* Exs. C and D attached hereto. In the other 21 declaratory judgment actions, the Rule 12 motions have not yet been heard or decided.

5. Simultaneously, TCHD sought dismissal of the multi-plaintiff case. In the multi-plaintiff action, the Dakota County judge granted TCHD's motion and dismissed the multi-plaintiff case. *See* Ex. E. As soon as that Order is amended to include the standard language, "let judgment be entered accordingly," and judgment is entered, we will be appealing that dismissal.

6. The 23 declaratory judgment actions are assigned to numerous, different judges, in these counties. (Some cases are not assigned to any specific judge.) TCHD is a plaintiff in each declaratory judgment, and there are 24 different defendants. Craig Smith, who is a plaintiff in the multi-plaintiff but not sued in a declaratory judgment action, is a plaintiff in limbo. (Judge Carolan's order dismisses Mr. Smith's claims even though he was not sued in a declaratory

judgment action—this issue will need to be addressed in the appeal.) In total, there are 26 parties involved.

7. If the 23 declaratory judgment actions are not combined and assigned to a single judge, the parties would be forced to proceed with 23 trials before 23 different juries. During each of these 23 trials, the other 24 multi-plaintiffs would testify in order to demonstrate that TCHD consistently followed this sales practice and that TCHD engaged in a pattern and practice of conduct that violates the Consumer Protection Act and common law. Therefore, each of the multi-plaintiffs would have to testify as to their factual situation 23 times; each of TCHD's officers would have to testify 23 times; TCHD's salesmen would have to testify 23 times. A trial that could be completed by one trial judge and one jury in approximately 10-12 trial days would be extended to the equivalent of 23 judges, taking approximately 10 trial days for each of 23 trials and 23 juries, a total of 230 trial days. In addition, with 23 trials before different juries, there is a potential for inconsistent adjudications based on TCHD's same sales practice.

8. The 25 multi-plaintiffs informed TCHD of their intent to bring a multi-plaintiff case. TCHD responded by serving 23 declaratory judgment actions in seven different counties. These declaratory judgment actions are all related because they all arise out of TCHD's common sales practice and repeated conduct of engaging in a pattern and practice of deceptive advertising, consumer and common law fraud, and breach of contract.

9. That enclosed are true and correct copies of the following exhibits:

- Exhibit A: Affidavit of Dawn M. Ausen
- Exhibit B: Affidavit of Dave Holper, Office Manager of Metro Legal Services
- Exhibit C: Order and Memorandum signed by Judge Carolan on January 8, 2001, in the *Twin Cities Harley-Davidson, Inc. v. Jeff Berg* case
- Exhibit D: Order and Memorandum signed by Judge Carolan on January 8, 2001, in the *Twin Cities Harley-Davidson, Inc. v. Rocklyn Bullis* case
- Exhibit E: Order and Memorandum signed by Judge Carolan on January 9, 2001, in the *Berg, et al. v. Twin Cities Harley-Davidson, Inc.* case

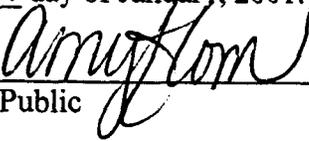
- Exhibit F: Minn. R. Gen. Prac. 113.03 and Advisory Committee Comment—  
2000 amendments  
Exhibit G: Complaint in the *Berg, et al. v. Twin Cities Harley-Davidson, Inc.*  
case

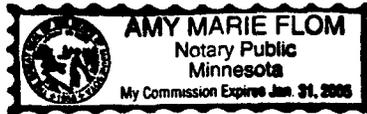
FURTHER YOUR AFFIANT SAYETH NOT.

Date: 1/17/01

  
\_\_\_\_\_  
Tammy P. Friederichs

Subscribed and sworn to before me  
this 17th day of January, 2001.

  
\_\_\_\_\_  
Notary Public



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Twin Cities Harley-Davidson, Inc.,

Plaintiff,

v.

Jeff Berg,

Defendant.

Case No.:

Case Type: Declaratory Judgment

AFFIDAVIT OF  
DAWN M. AUSEN

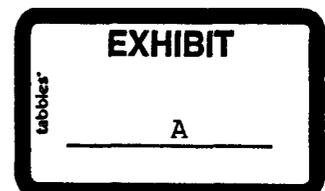
STATE OF MINNESOTA )

)s.s.

COUNTY OF HENNEPIN )

After first being duly sworn, Affiant states and deposes as follows:

1. My name is Dawn M. Ausen. I am a Legal Assistant/Secretary with the law firm of Sisam & Watje, Ltd.
2. On August 24, 2000, I attempted to serve process on Twin Cities Harley-Davidson, Inc. (hereinafter "TCHD"). I went to the store in Lakeville around 4:00 p.m. I entered the store and asked the woman at the front desk if Mike Kuelbs was in. Before answering, she looked around and looked at a gentleman behind me in the store, and then said that he was not in. The woman then asked if I wanted to leave a message. I told her I needed to speak with Mike Kuelbs directly. She then asked if I had something to leave for him. I said no, that I just wanted to speak to him. I got the distinct impression that the woman was aware that someone might be trying to serve him. I was not at all convinced that Mr. Kuelbs was not there and I wanted to make sure that the woman was telling me the truth. So I went towards the back of the store and looked around. I listened to their intercom system to see if anyone had paged Mike Kuelbs. I then asked a cashier if Mike Kuelbs was in. She said yes and said she would find him. She picked up the phone and proceeded to call someone in order to locate him. As the cashier was speaking to the person on the other line, her facial expression changed, she responded with a lot of "oh, okay" and then she looked at me and said that Mike wasn't there.
3. Based on all my observations of TCHD employees, it is my opinion that TCHD knew it was trying to be served process and was avoiding service.



4. Because I performed these service of process duties after my regularly-scheduled hours at Sisam & Watje, Ltd., I charged Sisam & Watje, Ltd. \$30.00 for my attempt to serve TCHD.

FURTHER YOUR AFFIANT SAYETH NOT.

Date: 9-8-00

*Dawn M. Ausen*  
Dawn M. Ausen

Subscribed and sworn to before me  
This 8<sup>th</sup> day of September, 2000.

*Amy Marie Flom*  
Notary Public



STATE OF MINNESOTA

AFFIDAVIT OF METRO LEGAL SERVICES

COUNTY OF HENNEPIN

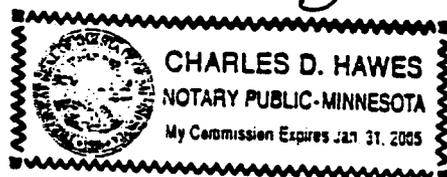
Dave Holper, Agent for Metro Legal Services, Inc., being duly sworn, on oath says that:

1. Your Affiant makes the following statements based on my personal knowledge:
2. I started working for Metro Legal Services, Inc., in approximately 1985. My position is Office Manager. I have 15 years of experience in the legal service of process field.
3. On August 23, 2000, Amy Flom of Sism & Watje, Ltd. contacted me to hire Metro legal to serve process on Twin Cities Harley-Davidson, Inc.
4. Your Affiant was given the names of three officers of said defendant: Leo Kuelbs, Mike Kuelbs and Kevin Kuelbs. In addition, two addresses where said defendant conducted business.
5. On August 23, 200 at 12:00 p.m., the first service attempt was made at 10770 - 165<sup>th</sup> Street West, Lakeville, MN. An employee initially told the process server that an officer of said defendant was available to serve. The employee went to an unknown location to get the officer, but returned and told the process server that in fact, no officers were present. The employee stated that Mike Kuelbs would be in after 5:00 p.m. and to stop back then.
6. On August 23, 200 at 6:00 p.m., service was again attempted at the Lakeville address. An employee told the process server that all officers of said defendant were not in and they were "on vacation".
7. On August 23, 2000 at 2:30 p.m., service was attempted at the other Twin Cities Harley-Davidson at 1441 - 85<sup>th</sup> Avenue NE, Blaine. No officers were in.
8. On the evening of August 24, 2000, service was unsuccessfully attempted at the residences of the three aforementioned officers.
9. Based on my experience in legal service of process, it is my opinion that the intended party to be served is deliberately and consciously taking extraordinary steps to avoid service. But for the steps taken to avoid service, Metro Legal would have completed service of process on August 23, 2000, the first day Sisam & Watje, Ltd. hired Metro Legal to serve Twin Cities Harley-Davidson, Inc..
10. To date, the amount invoiced to Sisam & Watje, Ltd. for service attempts is \$100.00.

FURTHER YOUR AFFIANT SAYETH NOT

Subscribed and sworn to before me,  
September 8, 2000.

  
Notary Public



EXHIBIT

B

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

---

Twin Cities Harley-Davidson, Inc.,

File No. C6-00-09217

Plaintiff,

ORDER

v.

Jeff Berg,

Defendant.

---

The above-entitled matter came before the Honorable Robert F. Carolan, Judge of District Court, on October 16, 2000, at the Dakota County Government Center, Hastings, Minnesota.

Michael M. Lafeber, Esq., and Michael W. Unger, Esq., appeared on behalf of plaintiff. Edwin L. Sisam, Esq., appeared on behalf of defendant.

Based upon the proceedings, this Court makes the following:

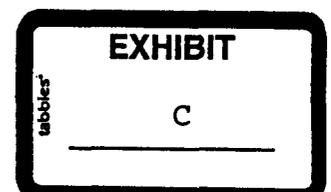
ORDER

1. Defendant's motion to dismiss this declaratory judgment proceeding is hereby DENIED.
2. This matter shall be set on for trial before any available judge. Any party seeking a trial by jury shall notify the Court Administrator and pay the appropriate jury fee within 15 business days from the date of this ORDER.
3. Defendant's motion for sanctions is hereby DENIED.
4. All other motions not herein GRANTED are hereby DENIED.
5. The attached memorandum is incorporated in and made a part of this

FILED  
VAN A PROCTOR, Court Administrator  
DAKOTA COUNTY

JAN 08 2001

DKM



Court's ORDER.

Dated: January 8, 2001

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Robert F. Carolan", written over a horizontal line.

Robert F. Carolan  
Judge of District Court

## MEMORANDUM

Plaintiff's complaint seeks a judgment that defendant has no valid claim for damages arising out of the sales arrangement between the parties which commenced when defendant placed a deposit with the plaintiff to be put on a waiting list for a new Harley-Davidson motorcycle. At issue is an allegation by the defendant that plaintiff made certain oral representations at the time of the deposit with respect to the final purchase price of the motorcycle. When the motorcycle was finally delivered the price paid by the defendant was higher than what defendant alleges the agreed upon sales price to be.

Defendant questions the propriety of consolidation of the claims of the defendant and twenty-four other Twin Cities Harley-Davidson customers in Court File No. C8-00-09221. However, whether that is proper or prejudicial is a decision that must be decided by the court in that action and is not properly before this court in the declaratory judgment file.

Declaratory judgment actions are authorized pursuant to Minn. Stat. § 555.01, which provides that:

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

Minn. Stat. § 555.01.

### Justiciable controversy

The only condition for a court's exercise of jurisdiction in a declaratory judgment

action is the existence of a justiciable controversy. *Seiz v. Citizens Pure Ice Co.*, 207 Minn. 277, 290 N.W. 802 (1940); *Graham v. Crow Wing County Bd. of Comm'rs*, 515 N.W.2d 81, 84 (Minn. Ct. App.1994) *review denied* (June 2, 1994). A justiciable controversy exists where there is a "genuine conflict in the tangible interests of opposing litigants." *Izaak Walton League of Am. Endowment, Inc. v. State, Dep't of Natural Resources*, 312 Minn. 587, 589, 252 N.W.2d 852, 854 (1977). Both sides have filed lawsuits, which arise out of the same set of alleged facts, clearly there exists a justiciable controversy.

While the court need only find a justiciable controversy to establish jurisdiction, there are other factors the court must or should also consider before allowing a declaratory judgment action to continue.

#### Terminate Controversy/Multiplicity of Actions

Minn. Stat. § 555.06 provides that a court must not grant declaratory relief where it "would not terminate the controversy giving rise to the proceeding." In addition, one of the purposes of declaratory judgments is to avoid a multiplicity of actions.

The controversy in this case would be terminated if the court granted declaratory judgment relief. The facts involve statements made or not made by a sales person to the defendant with respect to the selling price of a Harley-Davidson motorcycle defendant intended to purchase. A determination of these facts will resolve the controversy existing between the parties.

#### Prejudice rights/Mandatory joinder

Defendant's alleged that plaintiff has failed to join mandatory parties under Minn. Stat. § 555.11, which provides that "no declaration shall prejudice the rights of persons

not parties to the proceeding." At issue in this case are supposedly oral representations made by the plaintiff to the defendant with respect to the selling price of a particular model year Harley-Davidson motorcycle and at what price that particular motorcycle was going to be sold to this particular defendant. No other parties are missing or will be affected by a declaratory judgment in this case.

#### Threatened lawsuit/Improper purpose/Delay/Increase Cost of Litigation

Defendant puts much emphasis on the fact that a declaratory judgment action is inappropriate here because he had threatened a lawsuit and felt that plaintiff's has avoided service so as to file this action first. This contention is without merit, as the court can find no prohibition against commencing a declaratory judgment action in advance of a threatened lawsuit. Further, the court cannot on the information before it, make a determination that the plaintiff's case was filed for an improper purpose or to cause unnecessary delay or to increase the cost of litigation.

#### Jury trial

Defendant contends that he is entitled to a jury trial on the claims that are involved and that allowing this declaratory judgment action to continue, in effect will deny him a right to a jury. That is not the case. Minn. R. Civ. P. 57 specifically provides that the right to a jury trial is retained in a declaratory judgment action. While declaratory judgment actions are not necessarily the most appropriate vehicle with which to decide issues of fact, the court has jurisdiction to hear this matter and defendants have the right to request a jury trial.

#### Discretion with Trial Court

Ultimately the decision on whether to refuse a declaratory judgment action lies

with the court. After careful consideration of the various issues involved in this matter, the court finds that this matter should continue on for trial.

R.F.C.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. C4-00-09216

Twin Cities Harley-Davidson, Inc.,

Plaintiff,

ORDER

v.

Rocklyn Bullis,

Defendant.

The above-entitled matter came before the Honorable Robert F. Carolan, Judge of District Court, on October 16, 2000, at the Dakota County Government Center, Hastings, Minnesota.

Michael M. Lafeber, Esq., and Michael W. Unger, Esq., appeared on behalf of plaintiff. Edwin L. Sisam, Esq., appeared on behalf of defendant.

Based upon the proceedings, this Court makes the following:

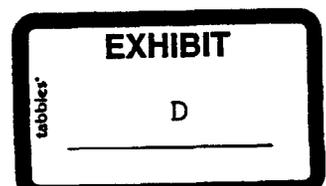
ORDER

1. Defendant's motion to dismiss this declaratory judgment proceeding is hereby DENIED.
2. This matter shall be set on for trial before any available judge. Any party seeking a trial by jury shall notify the Court Administrator and pay the appropriate jury fee within 15 business days from the date of this ORDER.
3. Defendant's motion for sanctions is hereby DENIED.
4. All other motions not herein GRANTED are hereby DENIED.
5. The attached memorandum is incorporated in and made a part of this

FILED DAKOTA COUNTY  
VAN A BROOKS, Court Administrator

JAN 08 2001

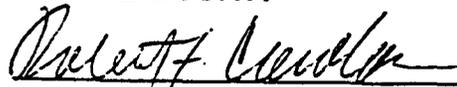
BY DKM  
DEPUTY



Court's ORDER.

Dated: January 8, 2001

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Robert F. Carolan", written over a horizontal line.

Robert F. Carolan  
Judge of District Court

## MEMORANDUM

Plaintiff's complaint seeks a judgment that defendant has no valid claim for damages arising out of the sales arrangement between the parties which commenced when defendant placed a deposit with the plaintiff to be put on a waiting list for a new Harley-Davidson motorcycle. At issue is an allegation by the defendant that plaintiff made certain oral representations at the time of the deposit with respect to the final purchase price of the motorcycle. When the motorcycle was finally delivered the price paid by the defendant was higher than what defendant alleges the agreed upon sales price to be.

Defendant questions the propriety of consolidation of the claims of the defendant and twenty-four other Twin Cities Harley-Davidson customers in Court File No. C8-00-09221. However, whether that is proper or prejudicial is a decision that must be decided by the court in that action and is not properly before this court in the declaratory judgment file.

Declaratory judgment actions are authorized pursuant to Minn. Stat. § 555.01, which provides that:

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While the court need only find a justiciable controversy to establish jurisdiction, there are other factors the court must or should also consider before allowing a declaratory judgment action to continue.

#### Terminate Controversy/Multiplicity of Actions

Minn. Stat. § 555.06 provides that a court must not grant declaratory relief where it "would not terminate the controversy giving rise to the proceeding." In addition, one of the purposes of declaratory judgments is to avoid a multiplicity of actions.

The controversy in this case would be terminated if the court granted declaratory judgment relief. The facts involve statements made or not made by a sales person to the defendant with respect to the selling price of a Harley-Davidson motorcycle defendant intended to purchase. A determination of these facts will resolve the controversy existing between the parties.

#### Prejudice rights/Mandatory joinder

Defendant's alleged that plaintiff has failed to join mandatory parties under Minn. Stat. § 555.11, which provides that "no declaration shall prejudice the rights of persons

not parties to the proceeding." At issue in this case are supposedly oral representations made by the plaintiff to the defendant with respect to the selling price of a particular model year Harley-Davidson motorcycle and at what price that particular motorcycle was going to be sold to this particular defendant. No other parties are missing or will be affected by a declaratory judgment in this case.

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Defendant puts much emphasis on the fact that a declaratory judgment action is inappropriate here because he had threatened a lawsuit and felt that plaintiff's has avoided service so as to file this action first. This contention is without merit, as the court can find no prohibition against commencing a declaratory judgment action in advance of a threatened lawsuit. Further, the court cannot on the information before it, make a determination that the plaintiff's case was filed for an improper purpose or to cause unnecessary delay or to increase the cost of litigation.

#### Jury trial

Defendant contends that he is entitled to a jury trial on the claims that are involved and that allowing this declaratory judgment action to continue, in effect will deny him a right to a jury. That is not the case. Minn. R. Civ. P. 57 specifically provides that the right to a jury trial is retained in a declaratory judgment action. While declaratory judgment actions are not necessarily the most appropriate vehicle with which to decide issues of fact, the court has jurisdiction to hear this matter and defendants have the right to request a jury trial.

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with the court. After careful consideration of the various issues involved in this matter,  
the court finds that this matter should continue on for trial.

R.F.C.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. C8-00-09221

Jeffrey S. Berg, Bradley P. Bruggenthies,  
Rocklyn Bullis, Robert J. Byrnes, Robert A.  
Cady, Terrance J. Carter, David Denzer,  
Tracy Gough, Dave Gough, Jeff Jungwirth,  
Tim Junkert, Jim Kinney, Connie L. Kohrt,  
Mark Lindstrom, Cris C. Lindwall, Alan L.  
Lucken, Daniel Lund, Anne Marie Mascia,  
Steven A. Rose, Dave Schodde, Craig  
Smith, Mark E. Sutherland, John Thorman,  
Lawrence White, and Terrell M. Williams,

ORDER

Plaintiffs,

v.

Twin Cities Harley-Davidson, Inc., a  
Minnesota corporation,

Defendant.

The above-entitled matter came before the Honorable Robert F. Carolan, Judge of District Court, on October 16, 2000, at the Dakota County Judicial Center, Hastings, Minnesota.

Edwin L. Sisam, Esq., appeared on behalf of plaintiffs. Michael M. Lafeber, Esq., and Michael W. Unger, Esq., appeared on behalf of defendant.

Based upon the proceedings, this Court makes the following:

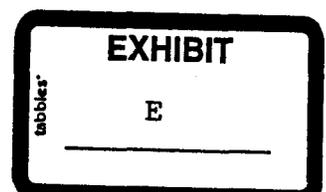
ORDER

1. Defendant's motion to dismiss the complaint in this matter due to prior pending declaratory judgment actions and for improper consolidation of claims is hereby GRANTED.

FILED DAKOTA COUNTY  
VAN A. BROSTROM, Court Administrator

JAN 09 2001

BY amc  
DEPUTY



2. Plaintiff's complaint in this matter is hereby DISMISSED without prejudice.

3. The attached memorandum is incorporated in and made part of this

Court's ORDER.

Dated: January 9, 2001

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Robert Casler", is written over a horizontal line.

Judge of District Court

## MEMORANDUM

Defendant asserts that since the declaratory judgment actions were filed first that the rule of "first to file" should be applied and this consolidated action should be dismissed. Alternatively, defendant maintains that the plaintiffs have improperly consolidated claims that arise out of separate and independent facts.

### First to File

Despite defendant's assertion, the "first to file rule" is not a rule, but merely a principle, a "blend of courtesy and expediency." *Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 291 (Minn. 1996) quoting *Medtronic, Inc. v. Catalyst Research Corp.*, 518 F.Supp. 946, 955 (D.Minn.1981), *aff'd*, 664 F.2d 660 (8th Cir.1981). This first to file principle "should be applied in a manner serving sound judicial administration." *Id.* quoting *Orthmann v. Apple River Campground, Inc.*, 765 F.2d 119, 121 (8th Cir.1985). The principle is not intended to be rigid, mechanical, or inflexible. *Orthmann*, 765 F.2d 119, 121 (8<sup>th</sup> Cir. 1985)(citations omitted). Minnesota caselaw sets forth numerous factors the court should take into consideration when determining whether to apply the first to file principle. See *Minnesota Mut. Life Ins. v. Anderson*, 410 N.W.2d 80 (Minn. Ct. App. 1987). None of those factors dictate that the court dismiss the first filed, declaratory judgment actions and proceed to trial on this consolidated claim.

### Consolidation

Minn. R. Civ. P. 42.01 permits consolidation when pending actions involve "a common question of law or fact." Whether to consolidate cases rests within the discretion of the trial court. *Fitzer v. Bloom*, 253 N.W.2d 395, 401-02 (Minn. 1977). The court "must balance convenience against the possibility of prejudice." *Schacter v.*

*Richter*, 271 Minn. 87, 92-93, 135 N.W.2d 66, 70 (1965).

The defendant claims that extreme prejudice will occur if plaintiffs are allowed to maintain this action in its consolidated form. Defendant's allege and plaintiffs do not disagree that the actions giving rise to this lawsuit involve oral representations made over a period of seven years, by various salespersons, at two different business locations of the defendant, to at least 25 different individual plaintiffs. Additionally the damages alleged in the complaint vary in both nature and actual dollar value depending upon which plaintiff is being addressed. The court finds that the consolidation of these claims was improper and prejudicial to the defendant. Therefore, the complaint should be dismissed without prejudice.

R.F.C.

<< MN ST GEN PRAC Rule 113.03 >>

Rule 113.03. <<-Motion->> <<+Consolidation of Cases in More Than One District+>>

<<-A motion for assignment to a single judge shall be made to the chief judge (or his or her designee) of the District in which the case is pending.->> <<+When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single judge may be made to the chief justice of the supreme court. A copy of the motion shall be served on the chief judge of each district in which such an action is pending. When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district. If the motion is to be granted, in selecting a judge the chief justice may consider, among other things, the scope of the cases and their possible impact on judicial resources, the availability of adequate judicial resources in the affected districts, and the ability, interests, training and experience of the available judges. As necessary, the chief justice may assign an alternate or back-up judge or judges to assist in the management and disposition of the cases. The assigned judge may refer any case to the chief judge of the district in which the case was pending for trial before a judge of that district selected by the chief judge.+>>

<<+Advisory Committee Comment-2000 Amendments+>>

<<+Rule 113.01 applies to assignment of a single case within a judicial district or county that does not already use a so-called block assignment system whereby cases are routinely assigned to the same judge for all pretrial and trial proceedings. Although parties can request a single-judge assignment in the informational statement under Rule 111, this rule contemplates a formal motion with facts presented supporting the request in the form of sworn testimony. The grounds for the motion in Rule 113.01(b) were derived from rules 1800-1811 of the California Special Rules for Trial Courts, Div. V, Complex Cases. If the court finds that management of the claims or issues has become routine, the matter would not rise to the level of requiring assignment to a single judge. A motion to certify a class, for example, might be routine in terms of court management. Once a class has been certified and the matter becomes a class action, however, the complexity may rise to the level that requires a single judge assignment. Under Rule 113.01(a), the motion is to be made to the chief judge (or his or her designee) of the district in which the case is pending.+>>

<<+Rule 113.02 recognizes that motions for consolidation of cases within a single judicial district may be heard by the chief judge of the district or his or her designee.+>>

<<+Rule 113.03 is new, and is intended merely to establish a formal procedure for requesting the chief justice to exercise the power to assign multiple cases in different districts to a single judge when the interests of justice dictate. The power to assign cases has been recognized by the supreme court in a few decisions over the past decade or so. See, e.g., *In re Minnesota Vitamin Antitrust Litigation*, 606 N.W.2d 446 (Minn. 2000); *In re Minnesota Silicone Implant Litigation*, 503 N.W.2d 472 (Minn. 1993); *In re Minnesota L-tryptophan Litigation*, No. C0-91-706 (Minn. Sup. Ct., Apr. 24, 1991); *In re Minnesota Asbestos Litigation*, No. C4-87-2406 (Minn. Sup. Ct., Dec. 15, 1987). The power is derived from the inherent power of the court and specific statutory recognition of that power in MINN. STAT. §§ 480.16 & 2.724 (1998). The rule is intended to establish a procedure for seeking consideration of transfer by the chief justice. The procedure contemplates notice to interested parties and consultation with the affected judges so that the sound administration of the cases is not compromised. Transfer of cases for coordinated pretrial proceedings is an established practice in the federal court system under 28 U.S.C. § 1407. Although this rule is not as complex as its federal counterpart, its purpose is largely the same-to facilitate the efficient and fair handling of multiple cases. Practice under the federal statute has worked well, and is one of the most important tools of complex case management in the federal courts. See generally DAVID F. HERR, *MULTIDISTRICT LITIGATION: HANDLING CASES BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION* (1986 & Supp. 1996). A companion change is made to MINN. R. CIV. P. 63.03, making it clear that when a judge is assigned by order of the chief justice pursuant to this rule that the judge so appointed may not be removed peremptorily under Rule 63 or the statutory restatement of the removal power contained in MINN. STAT. § 542.16 (1998).+>>

EXHIBIT

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

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Jeffrey S. Berg, Bradley P. Bruggenthies,  
Rocklyn Bullis, Robert J. Byrnes, Robert A.  
Cady, Terrance J. Carter, David Denzer,  
Tracy Gough, Dave Gough, Jeff Jungwirth,  
Tim Junkert, Jim Kinney, Connie L. Kohrt,  
Mark Lindstrom, Cris C. Lindwall, Alan L.  
Lucken, Daniel Lund, Anne Marie Mascia,  
Steven A. Rose, Dave Schodde, Craig Smith,  
Mark E. Sutherland, John Thorman,  
Lawrence White, and Terrell M. Williams,

Case No.:

Case Type: breach of contract  
and misrepresentation

COMPLAINT

TRIAL BY JURY DEMANDED

Plaintiffs,

v.

Twin Cities Harley-Davidson, Inc., a  
Minnesota Corporation,

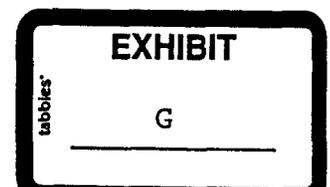
Defendant.

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COMES NOW PLAINTIFFS Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis,  
Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough,  
Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall,  
Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith,  
Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams, by their  
attorneys, bring this action against Twin Cities Harley Davidson, Inc., state and allege as  
follows:

THE PARTIES

1. All Plaintiffs are residents of Minnesota.



2. Defendant is a Minnesota corporation, licensed to do business in the State of Minnesota. Defendant conducts business at the following locations: 10770 165th Street West, Lakeville, Minnesota, and 1441 85th Avenue NE, Blaine, Minnesota.

3. The registered agent of Defendant corporation is Leo Kuelbs. Its registered address is 10770 165th Street West, Lakeville, MN 55044.

### JURISDICTION AND VENUE

4. Jurisdiction over Defendant is based upon Minn. Stat. § 543.19 and other applicable state laws.

5. This case is properly venued in Dakota County, Minnesota since Defendant can be found in Dakota County.

### FACTS

6. At all times relevant hereto, Defendant is and has been a factory authorized dealership, authorized to sell new Harley Davidson motorcycles.

7. During the period of 1993-2000, Plaintiffs talked to Defendant's sales representatives and management about purchasing new Harley Davidson motorcycles from Defendant.

8. During the period of 1993-2000, Defendant told Plaintiffs that sales of Harley Davidson motorcycles were extremely good resulting in the creation of a waiting list to purchase and take delivery of new Harley Davidson motorcycles.

9. Defendant stated that it employed the following sales practice for the sale of new Harley Davidson motorcycles: Defendant required customers to place orders for new Harley Davidson motorcycles, put their names on a waiting list, and make down payments (or deposits)

of \$500.00. Defendant stated that the down payment would reserve the customer's order of priority for taking delivery of the new motorcycle when it came in and could be applied to the purchase of the motorcycle.

10. Defendant stated that the waiting time to receive the new motorcycle was approximately three years.

11. Defendant further represented that when the customer's name came to the top of the list to take delivery of the motorcycle, Defendant would sell the motorcycle for the Harley Davidson "Manufacturer's Suggested Retail Price" (hereinafter "MSRP").

12. Based upon the promises and representations as stated above, Plaintiffs placed orders to purchase new Harley Davidson motorcycles, paid Defendant \$500.00 deposits, and waited on Defendant's waiting list.

13. Plaintiffs' actions in complying with Defendant's sales practice requirements entitled them to purchase new Harley Davidson motorcycles at the Harley Davidson MSRP.

14. When Plaintiffs' names came to the top of the list, Defendant notified each plaintiff that he/she could come in and complete the purchase of his/her new motorcycle.

15. Plaintiffs Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams purchased new Harley Davidson motorcycles from Defendant at a price which Defendant represented was the Harley Davidson MSRP.

16. However, said price was not the Harley Davidson MSRP. It was an inflated price.

17. Plaintiffs Berg, Bruggenthies, Bullis, Byrnes, Cady, Carter, T. Gough, D. Gough, Jungwirth, Junkert, Kinney, Kohrt, Lindstrom, Lucken, Lund, Mascia, Rose, Schodde, Smith, Sutherland, Thorman, White, and Williams did not know at that time that the price represented to them was not the Harley Davidson MSRP or that it was an inflated price.

18. As a direct and proximate cause of Defendant's conduct, Plaintiffs Berg, Bruggenthies, Bullis, Byrnes, Cady, Carter, T. Gough, D. Gough, Jungwirth, Junkert, Kinney, Kohrt, Lindstrom, Lucken, Lund, Mascia, Rose, Schodde, Smith, Sutherland, Thorman, White, and Williams have suffered damages in an amount as yet undetermined but believed, in the aggregate, to be in excess of \$50,000.00.

19. Plaintiffs David Denzer, Cris Lindwall, and Dave Schodde did not take possession of new Harley Davidson motorcycles because Defendant refused to sell them a new Harley Davidson motorcycle for the Harley Davidson MSRP.

20. As a direct and proximate conduct of Defendant's conduct, Plaintiffs Denzer, Lindwall, and Schodde have suffered damages, including but not limited to the benefit of the bargain, interest on their deposits, and out-of-pocket expenses. The amount of these damages are as yet undetermined but believed, in the aggregate, to be in excess of \$50,000.00.

#### COUNT I BREACH OF CONTRACT

21. Plaintiffs reallege each paragraph of the Complaint as if fully set forth herein.

22. Defendant promised to sell Plaintiffs new Harley Davidson motorcycles at the Harley Davidson MSRP if Plaintiffs would place orders, make \$500.00 deposits, and wait on a waiting list until the motorcycles were available and their names came to the top of the list.

23. Each Plaintiff placed an order to purchase a new Harley Davidson motorcycle, paid a \$500.00 deposit, and waited on Defendant's waiting list.

24. When each Plaintiff's name came to the top of the waiting list, Defendant refused to sell the motorcycles at the Harley Davidson MSRP as promised. Instead, Defendant increased the purchase price above the Harley Davidson MSRP.

25. Thus, Defendant breached its contracts with Plaintiffs.

26. As a result of Defendant's breaches, Plaintiffs have suffered financial and economic losses, and other losses including the benefit of the bargain. These damages have yet to be determined, but are, in the aggregate, believed to be in an amount in excess of \$50,000.00.

## COUNT II COMMON LAW MISREPRESENTATION

27. Plaintiffs reallege each paragraph of the Complaint as if fully set forth herein.

28. Defendant represented to Plaintiffs that it would sell them new Harley Davidson motorcycles at the Harley Davidson MSRP if Plaintiffs would place orders, make \$500.00 deposits and wait on a waiting list.

29. When Defendant informed Plaintiffs that their names had come to the top of the list and they could now purchase new Harley Davidson motorcycles, Defendant misrepresented to them that the purchase price was the Harley Davidson MSRP.

30. In connection with orally informing Plaintiffs of the purchase price, Defendant showed them its own price list document. Defendant represented to Plaintiffs that the prices stated on the document were the Harley Davidson MSRP.

31. Said document did not list the Harley Davidson MSRP; rather, it contained inflated prices.

32. Defendant's representations were about a material term of the sale, i.e. purchase price.

33. Defendant's representations were false at the time that Defendant made them and were about past and present facts.

34. Defendant knew at the time that it made the false and deceptive representations that it would not sell new Harley Davidson motorcycles at the Harley Davidson MSRP.

35. Defendant made such representations to induce Plaintiffs to rely upon such representations.

36. Plaintiffs Berg, Bruggenthies, Bullis, Byrnes, Cady, Carter, T. Gough, D. Gough, Jungwirth, Junkert, Kinney, Kohrt, Lindstrom, Lucken, Lund, Mascia, Rose, Schodde, Smith, Sutherland, Thorman, White, and Williams relied upon Defendant's representations by placing orders, paying \$500.00 deposits, waiting on a waiting list, and paying inflated prices for their motorcycles.

37. Plaintiffs Denzer, Lindwall, and Schodde relied upon Defendant's representations by placing orders, paying \$500.00 interest-free deposits, forgoing the opportunity to order new Harley Davidson motorcycles from another dealer(s), and waiting on the waiting list.

38. In furtherance of its illegal conduct, Defendant created its own pricing document which it misrepresented as the Harley Davidson MSRP. Based on the facts and circumstances, Plaintiffs' reliance was justified.

39. As a result of Defendant's misrepresentations, Plaintiffs have suffered financial and economic losses, including but not limited to out-of-pocket expenses. These damages have

yet to be determined, but are, in the aggregate, believed to be in an amount in excess of \$50,000.00.

**COUNT III  
VIOLATION OF MINN. STAT. §§ 325F.67 AND 325.69**

40. Plaintiffs reallege each paragraph of the Complaint as if fully set forth herein.

41. Defendant made, disseminated, and placed before Plaintiffs advertisements that contained representations and statements of fact which were untrue, deceptive, and misleading with the intent to induce the public and Plaintiffs to rely upon such material.

42. Defendant's conduct above described constitutes violations of Minn. Stat. § 325F.67 ("False statement in advertisement") and § 325F.69 Subd. 1, ("Fraud, misrepresentation, deceptive practices").

43. Defendant also used its sales representatives in furtherance of its violations of Minn. Stat. §§ 325F.67 and 325F.69.

44. Plaintiffs either paid more money to Defendant for their motorcycles as a result of Defendant's false, fraudulent, and deceptive sales tactics and misrepresentation or were denied the opportunity to purchase new Harley Davidson motorcycles at the Harley Davidson MSRP.

45. The acts of Defendant constitute a pattern and practice of false and misleading statements and deceptive sales practices, with the intent that Plaintiffs rely thereon in connection with the purchase of new Harley Davidson motorcycles.

46. Defendant has engaged in these unlawful, deceptive sales practices in violation of Minn. Stat. §325.F.67 and 325F.69.

47. As a result of these unlawful, deceptive sales practices, Plaintiffs have suffered financial and economic losses, and other losses. These damages are yet to be determined, but believed, in the aggregate, to exceed \$50,000.00.

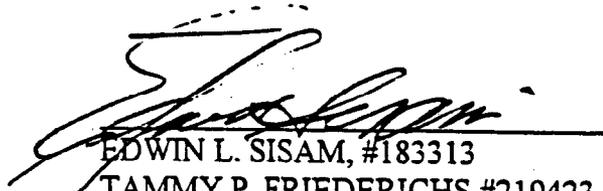
WHEREFORE, Plaintiffs pray for judgment against Defendant and for damages including, but not limited to the following:

- (1) for compensatory damages, including but not limited to, financial and economic damages, benefit of the bargain, and out of pocket expenses, an amount undetermined, but believed, in the aggregate, to be in excess of \$50,000.00, including post- and pre-judgment interest;
- (2) for attorneys' fees and costs pursuant to Minn. Stat. 8.31 (Minnesota Private Attorney General statute) for violations of Minn. Stat. §§ 325F.67 and 325F.69, and other applicable law; and
- (3) for such other and further relief in law or equity which the Court deems appropriate.

SISAM & WATJE, Ltd.

Date:

*Aug 22, 2010*

  
EDWIN L. SISAM, #183313  
TAMMY P. FRIEDERICHS #219423  
*Attorneys for Plaintiffs*  
6600 France Avenue South  
Suite 360  
Minneapolis, Minnesota 55435-1804  
(612) 920-8877

ACKNOWLEDGMENT

The undersigned acknowledges that pursuant to Minn. Stat. § 549.21, the court may award to any opposing party costs, disbursements and reasonable attorney fees and witness fees if the party represented by the undersigned, or the undersigned, acts in bad faith, asserts a claim or defense that is frivolous and costly to the other party, asserts an unfounded position solely to delay the proceedings, or harasses or commits a fraud upon the court.

  
Edwin L. Sisam  
*Attorney for Plaintiffs*

JAN 18 2001

**FILED**

STATE OF MINNESOTA  
IN MINNESOTA SUPREME COURT

PROPOSED ORDER

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**Twin Cities Harley-Davidson, Inc.,**  
Plaintiff

v.  
**Jeffrey S. Berg,**

Defendant.

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**TRIAL COURT CASE NO.:**  
19-C6-00-9217 (Dakota County)

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**Twin Cities Harley-Davidson, Inc.,**  
Plaintiff

v.  
**Bradley P. Bruggentheis,**

Defendant.

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**TRIAL COURT CASE NO.:**  
C6-00-7728 (Anoka County)

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**Twin Cities Harley-Davidson, Inc.,**  
Plaintiff

v.  
**Rocklyn Bullis,**

Defendant.

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**TRIAL COURT CASE NO.:**  
19-C4-00-9216 (Dakota County)

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**Twin Cities Harley-Davidson, Inc.,**  
Plaintiff

v.  
**Robert J. Byrnes,**

Defendant.

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**TRIAL COURT CASE NO.:**  
CT-00-014268 (Hennepin County)

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**Twin Cities Harley-Davidson, Inc.,**  
Plaintiff

v.  
**Robert A. Cady,**

Defendant.

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**TRIAL COURT CASE NO.:**  
C2-00-1539 (Rice County)

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrance J. Carter,  
Defendant.**

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**TRIAL COURT CASE NO.:  
19-CX-00-9611 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
David Denzer,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C4-00-7727 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave and Tracy Gough,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012647 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jeff Jungwirth,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012648 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Tim Junkert,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C9-00-8288 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Jim Kinney,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012649 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Connie L. Kohrt,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013032 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark Lindstrom,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012650 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Cris C. Lindwall,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012651 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Alan L. Lucken,  
Defendant.**

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**TRIAL COURT CASE NO.:  
2000-18572 (Scott County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Daniel Lund,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C1-00-8396 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Anne Marie Mascia,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C3-00-8240 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Steven A. Rose,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C6-00-7731 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave Schodde,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012652 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark E. Sutherland,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013090 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
John Thorman,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012653 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Lawrence White,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C0-00-668 (Nobles County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrell M. Williams,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012654 (Hennepin County)**

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**Jeffrey S. Berg, Bradley P. Bruggenthies,  
Rocklyn Bullis, Robert J. Byrnes, Robert A.  
Cady, Terrance J. Carter, David Denzer,  
Tracy Gough, Dave Gough, Jeff Jungwirth,  
Tim Junkert, Jim Kinney, Connie L. Kohrt,  
Mark Lindstrom, Cris C. Lindwall, Alan L.  
Lucken, Daniel Lund, Anne Marie Mascia,  
Steven A. Rose, Dave Schodde, Craig Smith,  
Mark E. Sutherland, John Thorman,  
Lawrence White, and Terrell M. Williams,**

**TRIAL COURT CASE NO.:  
19-C8-00-9221 (Dakota County)**

**Plaintiffs,**

**v.**

**Twin Cities Harley-Davidson, Inc.,  
Defendant.**

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This matter came before The Honorable Kathleen Anne Blatz, Chief Justice of the Minnesota Supreme Court, with or without hearing. Pursuant to Minn. R. Gen. Prac. 113.01 and Minn. R. Gen. Prac. 113.03 (2001), Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams (hereinafter “multi-plaintiffs”) requested that the Chief Justice of the Minnesota Supreme Court order that all pretrial and trial proceedings in all cases above-referenced be assigned to a single judge. All parties provided the Court with written submissions.

**Based on the files, records and proceedings herein, IT IS ORDERED:**

1. Pursuant to Minn. R. Gen. Prac. 113.01 and Minn. R. Gen. Prac. 113.03 (2001), this Court has authority to assign a single judge to handle all pretrial and trial proceedings in the above referenced cases.

2. The interests of justice and the prevention of an unnecessary waste of judicial resources require that the above referenced cases be assigned to a single judge.

3. The Honorable \_\_\_\_\_, Judge of \_\_\_\_\_ County District Court will henceforth be assigned to preside over all pretrial and trial proceedings in the following cases:

*Twin Cities Harley-Davidson, Inc. v. Jeffrey S. Berg*, Dakota County File No. 19-C6-00-9217; *Twin Cities Harley-Davidson, Inc. v. Bradley P. Bruggentheis*, Anoka County File No. C6-00-7728; *Twin Cities Harley-Davidson, Inc. v. Rocklyn Bullis*, Dakota County File No. 19-C4-00-9216; *Twin Cities Harley-Davidson, Inc. v. Robert J. Byrnes*, Hennepin County File No. CT 00-014268; *Twin Cities Harley-Davidson, Inc. v. Robert A. Cady*, Rice County File No. C2-00-1539; *Twin Cities Harley-Davidson, Inc. v. Terrance J. Carter*, Dakota County File No. 19-CX-00-9611; *Twin Cities Harley-Davidson, Inc. v. David Denzer*, Anoka County File No. C4-00-7727; *Twin Cities Harley-Davidson, Inc. v. Dave and Tracy Gough*, Hennepin County File No. CT 00-012647; *Twin Cities Harley-Davidson, Inc. v. Jeff Jungwirth*, Hennepin County File No. CT 00-012648; *Twin Cities Harley-Davidson, Inc. v. Tim Junkert*, Anoka County File No. C9-00-8288; *Twin Cities Harley-Davidson, Inc. v. Jim Kinney*, Hennepin County File No. CT 00-012649; *Twin Cities Harley-Davidson, Inc. v. Connie L. Kohrt*, Hennepin County File No. CT 00-013032; *Twin Cities Harley-Davidson, Inc. v. Mark Lindstrom*, Hennepin County File No. CT 00-012650; *Twin Cities Harley-Davidson, Inc. v. Cris C. Lindwall*, Hennepin County File No. CT 00-012651; *Twin Cities Harley-Davidson, Inc. v. Alan L. Lucken*, Scott County File No. 2000-18572; *Twin Cities Harley-Davidson, Inc. v. Daniel Lund*, Anoka County File No. C1-00-8396; *Twin Cities Harley-Davidson, Inc. v. Anne Marie Mascia*, Anoka County File No. C3-00-8240; *Twin Cities Harley-Davidson, Inc. v. Steven A. Rose*, Anoka County File No. C6-00-7731; *Twin Cities Harley-Davidson, Inc. v. Dave Schodde*, Hennepin County File No. CT 00-013090; *Twin Cities Harley-Davidson, Inc. v. Mark E. Sutherland*, Hennepin County File No. CT 00-013090; *Twin Cities Harley-Davidson, Inc. v. John Thorman*, Hennepin County File No. CT 00-012653; *Twin Cities Harley-Davidson, Inc. v. Lawrence White*, Nobles County File No. C0-00-668; *Twin Cities Harley-Davidson, Inc. v. Terrell M. Williams*, Hennepin County File No. CT 00-012654, and *Berg, et al. v. Twin Cities Harley-Davidson, Inc.*, Dakota County File No. 19-C8-00-9221

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Kathleen Anne Blatz  
Chief Justice of the Minnesota Supreme Court

STATE OF MINNESOTA  
IN MINNESOTA SUPREME COURT

OFFICE OF  
APPELLATE COURTS

JAN 23 2001

AFFIDAVIT OF SERVICE

**FILED**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**TRIAL COURT CASE NO.:  
19-C6-00-9217 (Dakota County)**

**v.  
Jeffrey S. Berg,  
Defendant.**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**TRIAL COURT CASE NO.:  
C6-00-7728 (Anoka County)**

**v.  
Bradley P. Bruggentheis,  
Defendant.**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**TRIAL COURT CASE NO.:  
19-C4-00-9216 (Dakota County)**

**v.  
Rocklyn Bullis,  
Defendant.**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**TRIAL COURT CASE NO.:  
CT-00-014268 (Hennepin County)**

**v.  
Robert J. Byrnes,  
Defendant.**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**TRIAL COURT CASE NO.:  
C2-00-1539 (Rice County)**

**v.  
Robert A. Cady,  
Defendant.**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Terrance J. Carter,  
Defendant.**

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**TRIAL COURT CASE NO.:  
19-CX-00-9611 (Dakota County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**David Denzer,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C4-00-7727 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Dave and Tracy Gough,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012647 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Jeff Jungwirth,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012648 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Tim Junkert,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C9-00-8288 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Jim Kinney,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012649 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Connie L. Kohrt,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013032 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Mark Lindstrom,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012650 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Cris C. Lindwall,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012651 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Alan L. Lucken,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
2000-18572 (Scott County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Daniel Lund,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
C1-00-8396 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

v.

**Anne Marie Mascia,**

**Defendant.**

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**TRIAL COURT CASE NO.:  
C3-00-8240 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Steven A. Rose,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C6-00-7731 (Anoka County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Dave Schodde,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012652 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Mark E. Sutherland,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-013090 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
John Thorman,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012653 (Hennepin County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Lawrence White,  
Defendant.**

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**TRIAL COURT CASE NO.:  
C0-00-668 (Nobles County)**

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**Twin Cities Harley-Davidson, Inc.,  
Plaintiff**

**v.  
Terrell M. Williams,  
Defendant.**

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**TRIAL COURT CASE NO.:  
CT-00-012654 (Hennepin County)**



and by mailing a copy of the above listed documents to the following Chief Judges:

The Honorable Leslie M. Metzen  
Chief Judge of Dakota County District Court and Scott County District Court  
Dakota County Judicial Center  
1560 Highway 55  
Hastings, MN 5503

The Honorable R. Joseph Quinn  
Chief Judge of Anoka County District Court  
Anoka County Courthouse  
325 East Main Street  
Anoka, MN 55303-2489

The Honorable Bruce F. Gross  
Chief Judge of Nobles County District Court  
Nobles County Courthouse  
318 Ninth Street  
Worthington, MN 55187

The Honorable Gerald W. Ring  
Chief Judge of Rice County District Court  
Rice County Courthouse  
218 NW Third Street  
Faribault, MN 55021

The Honorable Daniel H. Mabley  
Chief Judge of Hennepin County District Court  
Hennepin County Government Center  
Chambers – C1721  
300 South Sixth Street  
Minneapolis, MN 554

  
\_\_\_\_\_  
Amy Flom

Subscribed and sworn to before me  
this 17 day of January, 2001.

  
\_\_\_\_\_  
Notary Public

